

KEN WARREN OUTDOORS, INC.

IBLA 84-436

Decided March 25, 1985

Appeal from a decision of the Medford, Oregon, District Office, Bureau of Land Management, denying a protest of the rejection of an untimely filed application for a special use permit.

Affirmed.

1. Applications and Entries: Generally -- Special Use Permits

Where an application for a special use permit is filed after a deadline imposed by the Bureau of Land Management for compelling administrative reasons, the application is properly rejected.

APPEARANCES: David L. Jensen, Esq., Eugene, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Ken Warren Outdoors, Inc. (KWO), appeals from a decision of the Medford, Oregon, District Office, Bureau of Land Management (BLM), dated March 12, 1984, denying a protest against BLM's rejection of an untimely filed application for a special use permit to conduct commercial float trips on the Klamath River in Oregon during the 1984 season. The application was received by BLM after the December 31, 1983, deadline. ^{1/}

KWO, an Oregon corporation, is a commercial outfitter which conducts one or two recreational river trips annually on the Klamath River. When BLM issued a proposed decision on February 17, 1984, denying KWO's application for the 1984 season, KWO filed a protest with BLM on February 27, 1984. In support of its protest, KWO asserted that its failure to timely submit the permit application was inadvertent. Appellant stated that its business affairs are managed by two persons, Ken and Jan Warren. From September through November 1983, they participated in an unusual expedition on the Yangtze River in China. Upon returning to their business office in Portland,

^{1/} The exact date of receipt is unclear because BLM failed to include a time-stamped copy of the application in the case file and the fact is undisclosed in the pleadings or the record. However, appellant concedes and the records show that the application was not signed, dated, and mailed until Feb. 1, 1984.

Oregon, on November 20, 1983, they were promptly inundated with accumulated work and special problems caused by their China trip. During their absence, KWO's business office was maintained by a business acquaintance of the Warrens who purportedly had limited knowledge of their method of operations. KWO claimed that the application forms and filing information sent from BLM were delivered on November 14, 1983, prior to the Warrens' return, and placed in KWO's filing system. Appellant contended the Warrens did not realize the application was past due until February 1, 1984, when Jan Warren prepared and mailed the application. KWO asked BLM to recognize its unfortunate situation and accept the late filing. On March 21, 1984, BLM denied the protest because the stated circumstances were inadequate to justify accepting the application.

In the statement of reasons for appeal, KWO recites the facts stated in its protest and declares that it has relied upon its history of permitted use and arranged its 1984 Klamath River season accordingly. Appellant acknowledges BLM's discretionary authority to issue special use permits, but argues that BLM's denial of the application is an abuse of discretion. It asserts that BLM's decision is an extreme sanction which did not consider KWO's record of operation, its temporary extraordinary business problems, and its commitments to the public.

In response to KWO's appeal, BLM has submitted an explanation of the application deadline date and detailed reasons for rejecting the application. The Klamath River is heavily used for private and commercial river trips. In order to control this use, BLM has established restrictions on the number of passengers per trip and limited the number of launches per day. When management policies were initially prepared for the Klamath River program, meetings were held with the commercial outfitters to resolve scheduling conflicts. After considering the comments made at those meetings, BLM decided to establish an application cutoff date rather than restrict the number of commercial permit applicants. At the suggestion of the commercial outfitters, December 31 was selected as the cutoff date for receiving applications for the upcoming season. The 1984 season was the fourth consecutive year the deadline was employed by BLM. Nine applications for the 1983 season were received late and all were denied. KWO's application was the only untimely submission for the 1984 season.

In response to appellant's statement of reasons for appeal, BLM has offered the following explanation of its adherence to the deadline:

Considering the BLM's need to be able to schedule starts, when the need arises, for safety reasons, the outfitter's need to know of any schedules as early as possible for advertising purposes, the Klamath River Program's limited work force, the increased paperwork necessitated by the new user-fee policy, the fact that it is more difficult to manage a river that is not closed to new outfitters, and the fact that more applications were mailed to potential permittees this year than any previous, an application deadline was again deemed necessary.

Addressing KWO's statements, BLM recites the history of KWO's record of use. In 1981, it ran only 1 trip with 10 passengers. It was granted permission for the 1982 season and filed a postuse report reflecting one trip with seven passengers. During the 1983 season, it conducted 2 trips with a total of 23 passengers. BLM states that, based on this pattern of use, the

projected needs of KWO, like other less active commercial outfitters on the Klamath River, are unpredictable from year to year. BLM also disputes KWO's assertion that the application form was received before the Warrens' return from China and that they did not see it until February 1984. The certified mail receipt found in the case file shows that the form and accompanying filing information were received on November 21, 1983. The signature appears to be that of Jan Warren.

[1] Special use permits are issued under the general authority of the Secretary of the Interior to regulate use of the public lands and related waters, pursuant to section 302(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732(b) (1982). Special recreation use permit requirements are set forth in 43 CFR Subpart 8372, which provides in part: "The approval of an application and subsequent issuance of a special recreation permit is discretionary with the authorized officer." 43 CFR 8372.3. Accordingly, BLM has the discretion to reject a special recreation use permit application where such application conflicts with BLM objectives, responsibilities, or programs for management of the public lands. See National Public Lands Task Force, 70 IBLA 214 (1983); Cascade Motorcycle Club, 56 IBLA 134 (1981).

BLM denied KWO's application because it concluded that, in light of BLM's administrative workload, the time and effort necessary to process the tardy application conflicted with BLM's objectives and responsibilities to expeditiously prepare and coordinate the permits for the 1984 season. Where effective administration of the public lands requires the establishment of deadlines for application to use the public lands or related waters, an untimely application is properly rejected. See Outdoor Adventure River Specialists, Inc., 41 IBLA 132, 133 (1979). KWO received the application form 40 days in advance of the deadline. The first paragraph of the attached information memorandum included the following warning: "PLEASE NOTE THE APPLICATION DEADLINE!" Since BLM has a compelling need to establish its management plans timely for each river season, we find appellant has failed to establish the decision was an arbitrary or an unreasonable exercise of discretion. 2/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Gail M. Frazier
Administrative Judge

2/ We find nothing in the record to indicate that appellant will be prejudiced in future seasons by rejection of its untimely application for the 1984 season. See Outdoor Adventure River Specialists, Inc., supra.

